

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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9 ORACLE USA, INC., a Colorado corporation;
10 ORACLE AMERICA, INC., a Delaware
11 corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation.

Case No. 2:10-cv-0106-JRH-(VCE)

12 || Plaintiffs.

ORDER

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14 RIMINI STREET, INC., a Nevada corporation;
15 SETH RAVIN, an individual.

Defendants

18 Before the court is defendant Rimini Street, Inc.’s (“Rimini Street”) emergency motion to
19 stay enforcement of the recently issued permanent injunction (ECF No. 1166) pending appeal, or
20 alternatively, for a temporary stay, ECF No. 1168.

21 I. Facts and Procedural Background

22 This action has an extensive history. In brief, and relevant to the present motion, plaintiff
23 Oracle develops, manufactures, and licenses computer software. Oracle also provides after-
24 license software support services to customers who license its copyrighted software. Defendant
25 Rimini Street is a company that provides similar after-license software support services to
26 customers licensing Oracle's copyrighted software and competes directly with Oracle to provide
27 these services.

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1 In 2010, Oracle filed a complaint for copyright infringement against Rimini Street
2 alleging that beginning in 2006, Rimini Street copied several of Oracle's copyright-protected
3 software programs – including Oracle's copyrighted PeopleSoft, J.D. Edwards, and Siebel-
4 branded Enterprise Software products – onto its own computer systems in order to provide after-
5 license software support services to customers who licensed the copyrighted software programs.
6 ECF No. 1. A jury trial was held on Oracle's copyright infringement claim in fall 2015. On
7 October 13, 2015, the jury returned its verdict and found that Rimini Street engaged in copyright
8 infringement on ninety-three of Oracle's copyrighted PeopleSoft, J.D. Edwards, and Siebel-
9 branded Enterprise Software products and awarded Oracle \$35.6 million in damages.
10 ECF No. 896. After the jury verdict, Oracle filed a motion for a permanent injunction
11 (ECF No. 900) which was granted by the court (ECF No. 1049). Rimini Street then appealed the
12 jury verdict and court order to the Ninth Circuit Court of Appeals. *See* ECF No. 1078.

13 On January 8, 2018, the Ninth Circuit issued its decision and opinion on Rimini Street's
14 appeal. *Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948 (9th Cir. 2018). In its decision, the
15 Ninth Circuit affirmed in-part, reversed in-part, vacated in-part, and remanded in-part the jury's
16 verdict and the court's various orders in this action. In particular, the Ninth Circuit affirmed in
17 full all of the court's and jury's findings related to Oracle's claim of copyright infringement
18 against Rimini Street for all ninety-three copyright registrations at issue in this action and the
19 jury's \$35.6 million judgment against Rimini Street for its infringement. *Id.* at 953 ("[W]e affirm
20 the judgment with respect to the copyright infringement claims. We also affirm the remedies
21 with respect to those claims[.]"). However, the Ninth Circuit vacated the permanent injunction
22 and remanded the issue back to this court for the limited purpose of determining whether the
23 court would again issue a permanent injunction in light of the rest of the Ninth Circuit's order.
24 *Id.* at 964-65.

25 Subsequently, Oracle filed a renewed motion for a permanent injunction (ECF No. 1117)
26 which was granted by the court (ECF No. 1164). A permanent injunction was then issued against
27 Rimini Street on August 16, 2018. ECF No. 1166. Rimini Street appealed the injunction to the
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1 Ninth Circuit Court of Appeals. *See* ECF No. 1167. Thereafter, Rimini Street filed the present
2 motion to stay the permanent injunction pending appeal. ECF No. 1168.

3 **II. Discussion**

4 **A. Stay Pending Appeal**

5 Rule 62(c) authorizes a district court to stay enforcement of a permanent injunction
6 pending appeal. *Hilton v. Braunschweig*, 481 U.S. 770, 776 (1987). A stay pending appeal is an
7 “extraordinary remedy” that may be awarded only upon a clear showing that an appellant is
8 entitled to such relief. *In re Smith*, 397 B.R. 134, 136 (Bankr. D. Nev. 2008). In determining
9 whether to issue a stay, a court examines several factors including: (1) whether the applicant has
10 made a strong showing that he is likely to succeed on the merits of the appeal; (2) whether the
11 applicant will be irreparably injured absent a stay; (3) whether a stay will substantially injure the
12 non-moving party; and (4) where the public interest lies. *See Leiva-Perez v. Holder*, 640 F.3d
13 962, 964 (9th Cir. 2011).

14 The court has reviewed the documents and pleadings on file in this matter and finds that
15 Rimini Street has not met the standard for a stay of the issued permanent injunction pending
16 appeal. First, the court finds that Rimini Street is not likely to succeed on the merits of its appeal
17 as it relates to the issuance of the permanent injunction. In its motion, Rimini Street raises the
18 same arguments and issues it has raised throughout this action which the court has repeatedly
19 denied as without merit. Rimini Street’s failure to raise any new legal or factual arguments that
20 have not already been discounted by the court weighs heavily against Rimini Street’s claim that
21 it is likely to succeed on the merits of its appeal. This is especially true in light of the fact that the
22 Ninth Circuit only vacated and remanded the injunction rather than reverse the permanent
23 injunction in its entirety. Further, Rimini Street’s motion is premised on an unsupported and
24 extremely narrow reading of the Ninth Circuit opinion that the court has already addressed in its
25 order granting Oracle’s motion for a permanent injunction. *See* ECF No. 1164. Thus,
26 Rimini Street is not likely to succeed on the merits of its appeal.

27 Second, the court finds that Rimini Street has not established any sufficiently irreparable
28 harm absent a stay of the injunction to warrant granting its motion in light of the court’s finding

1 that it is not likely to succeed on its appeal. Throughout this action, Rimini Street has steadfastly
2 represented that an injunction was not necessary to curtail its infringement because it had already
3 changed its business model to a non-infringing alternative in response to the court's summary
4 judgment orders. Further, after the court issued the initial permanent injunction, Rimini Street
5 repeatedly made statements to the public that the injunction would not prohibit its ongoing or
6 future software support services. Thus, Rimini Street's own conduct establishes a lack of
7 irreparable harm.

8 Finally, the public interest does not support a stay of the underlying injunction. The court
9 has already determined that issuing an injunction in this action ultimately serves the purpose of
10 enriching the general public through access to creative works by giving Oracle an incentive to
11 continue to develop software for public use. *See* ECF No. 1064. Therefore, the court shall deny
12 Rimini Street's motion to stay the recently issued permanent injunction pending the outcome of
13 its appeal.

14 **B. Temporary Stay**

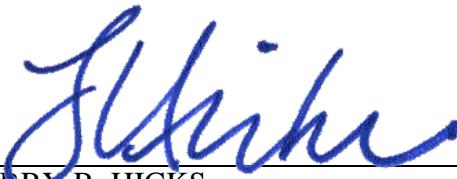
15 Rimini Street alternatively requests that, if the court declines to issue a permanent stay
16 pending appeal, the court temporarily stay the injunction for a sufficient period of time to allow
17 it to file a motion to stay with the Ninth Circuit. The court has reviewed Rimini Street's motion
18 and finds good cause for a limited stay. The court recognizes that the present motion was filed
19 concurrently with Rimini Street's notice of appeal and that Rimini Street has stated its intention
20 to file a motion to stay with the Ninth Circuit. The court finds that based on the lengthy history
21 of this action, the prior appellate record, and the fact that there is a second separate action
22 between the parties which will address several of the legal and factual issues raised in the prior
23 appeal, as well as, Rimini Street's alleged ongoing copyright infringement, a temporary stay of
24 the permanent injunction to allow Rimini Street to seek a motion to stay with the Ninth Circuit is
25 warranted. Further, the court finds that Oracle is unlikely to be harmed by a stay at this time as
26 Oracle has not established that it suffered any harm after the Ninth Circuit granted a stay of the
27 previous injunction back in 2016. Therefore, the court shall grant Rimini Street's motion as to a
28 temporary stay.

1 IT IS THEREFORE ORDERED that defendant's motion for a stay of the permanent
2 injunction pending appeal (ECF No. 1168) is DENIED in accordance with this order. However,
3 the previously issued permanent injunction (ECF No. 1166) is TEMPORARILY STAYED for a
4 period of up to sixty (60) days from the entry of this order to allow defendant Rimini Street, Inc.
5 to obtain a stay pending appeal from the Ninth Circuit Court of Appeals in accordance with
6 Federal Rule of Appellate Procedure 8(a)(2).

7 IT IS FURTHER ORDERED that defendant shall file a notice with the court of the
8 ultimate disposition of its motion to stay within five (5) days of the Ninth Circuit's order.

9 IT IS SO ORDERED.

10 DATED this 11th day of September, 2018.

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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE

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